

### **REMARKS**

Claims 1, 2, 12, 14 and 15 have been amended to even more particularly describe the recited subject matter. The Applicants have added the limitation “phenylcarbonyloxymethyl” to the scope of Ar<sup>3</sup>. This limitation is supported by compound 82, depicted in Table 1, page 48 of the as-filed Specification. Claim 9 has been amended to correct the structural formula of compound 79. Claim 16 has been amended so that the period appears after the reaction sequence. Claim 17 has been amended to expressly recite the required limitations of claims 15 and 16 so that claim 17 is now in proper form. Claim 11 has been canceled. No new matter has been added.

#### **Rejections under 35 U.S.C. § 112, second paragraph**

Claim 11 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. Claim 11 has been canceled; the rejection is moot.

Claim 15 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. Claim 15 has been amended to recite the definitions of all recited variables. The rejection is considered moot.

#### **Rejections under 35 U.S.C. § 112, first paragraph**

Claims 1, 3-8, and 11-15 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly nonenabled. The Office acknowledges that the scope of claims 2 and 9 is enabled. While the Applicants assert that the full scope of claims 1, 3-8, and 11-15 is supported by the specification as originally filed, the scope of Het<sup>2</sup>, n, m, p, q, Q, and X has been amended to further the prosecution of the pending application. The Applicants expressly reserve the right to file the canceled subject matter in continuing or divisional application. The Applicants request reconsideration and withdrawal of the rejection.

#### **Rejection under 35 U.S.C. 103**

Claims 1-9 and 11-15 stand rejected under 35 U.S.C. § 103 as allegedly obvious over WO 2004/033428 (WO428) and WO 2004/056772 (WO772). As WO428 and WO772 are only available as prior art under 35 U.S.C. § 102(e) and as WO428, WO772, and the present

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**PATENT**

application are all assigned to Janssen Pharmaceutica N.V., the cited art does not preclude the patentability of the pending claims. 35 U.S.C. § 103(c).

The present application is the National Stage of PCT/2003EP/51035, filed December 17, 2003. WO428 was published April 22, 2004 with a filing date of October 7, 2003; WO772 was published July 8, 2004 with a filing date of December 30, 2002. Both WO428 and WO772 are thus only available as prior art under 35 U.S.C. § 102(e). As recorded at reel 019184, frame 0380, the subject matter of the present invention is assigned to Janssen Pharmaceutica N.V. At the time the present invention was made, the subject matter of WO428 (see reel 16909, frame 0910) and WO772 was also assigned to Janssen Pharmaceutica N.V. As a result, the cited art does not preclude the patentability of the present invention under 35 U.S.C. 103(c). Reconsideration and withdrawal of the rejection is respectfully requested.

#### **Obviousness-type double patenting rejection**

Claims 1-9 and 11-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting. If the rejection is maintained upon an indication of the allowability of the pending claims, a terminal disclaimer will be filed.

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The Applicants assert that the foregoing constitutes a full and complete response to the July 10, 2008 Office Action and that the pending claims are in condition for allowance. An early notice to that effect is, therefore, earnestly solicited. Rejoinder of claims 16 and 17 is also requested.

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